whether the words "renew" or "extend" are used.[5] While in other jurisdictions where the dictinction is not recognized at all, the tenant who holds over and pays rent without notice of his intention to renew, or any new agreement, can be held for the full period.[6]

F. B. F.

EVIDENCE—INSTRUMENTS UNDER SEAL—ADMISSIBILITY OF CONTEMPORANEOUS PAROL AGREEMENT.—In the recent case of *Whitaker & Fowle* v. *Lane*,[1] the Supreme Court of Appeals of Virginia has, for the first time, held that parol evidence is admissible to show that a deed under seal, absolute on its face and delivered to the obligee himself, was in fact to take effect on the performance of a condition and not before such performance. This holding is in direct opposition to the doctrine of the common law and overrules the former cases on this subject in Virginia.

The great mass of authority on this subject[2] depends directly or indirectly upon the statements by Lord Coke and Sheppard, who claim that the delivery of a deed in escrow must be to one who is a stranger to it, and not to the party himself to whom it is made.[3] Bishop, who is also frequently cited, holds the same as to deeds, but makes a distinction as to contracts which are not under seal.[4] He bases the distinction on the fact that both oral and written contracts not under seal are *parol* as distinguished from sealed instruments which are *specialties*. He therefore claims that an oral condition incorporated in a written contract does not change the degree of the instrument, while in the case of an instrument under seal the degree would be reduced.

There are only two cases in Virginia which are directly in point and they follow the common law doctrine.[5] A number of other cases, in which there is the slightest flaw in the instrument, hold that parol evidence is admissible to show a deed incomplete on its face was delivered as an escrow.[6] And another evidence of the tendency to draw away from the doctrine of the common law is found in cases which hold that parol evidence may be admitted to show that a deed absolute on its face is in reality a mortgage.[7]

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[5] Orton *v.* Noonan, 27 Wis. 272; Kollock *v.* Scribner, 98 Wis. 104, 73 N. W. 776.

[6] Insurance and Law Building Co. *v.* National Bank, 71 Mo. 58; Ranlet *v.* Cook, 44 N. H. 512.

[1] 104 S. E. 252.

[2] 17 CYC. 644; note, 130 Am. St. Rep. 910, 929.

[3] SHEPPARD, TOUCHSTONE, p. 124.

[4] BISHOP, CONTRACTS, § 357.

[5] Miller *v.* Fletcher, 27 Gratt. 403, 21 Am. Rep. 356; Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

[6] Hicks *v.* Goode, 12 Leigh 479, 37 Am. Dec. 677; Ward *v.* Churn, 18 Gratt. 801, 98 Am. Dec. 749; Wendlinger *v.* Smith, 75 Va. 309, 40 Am. Rep. 727; but see Nash *v.* Fugate, 32 Gratt. 595, 43 Am. Rep. 780.

[7] Holladay *v.* Willis, 101 Va. 274, 43 S. E. 619; see Motley *v.* Carstairs, 114 Va. 429, 76 S. E. 948.

In an article in the COLUMBIA LAW REVIEW, Mr. Herbert T. Tiffany makes a strong contention against the common law rule, and he supports his statements by some slight authority.[8] He contends that the old view is a relic of "primitive formalism which attaches some peculiar efficacy to the physical transfer of the instrument as involving a symbolical transfer of the property described therein".

In a very able opinion in the case of *Whitaker & Fowle* v. *Lane, supra,* Burks, J., gives a very complete review of the authorities upon this subject in England as well as in this country. He concludes his statement by saying:

"So that, so far as concerns the decisions in England, in the Supreme Court of the United States and in Virginia—notwithstanding the great array of authority in the state courts in favor of the doctrine—there is little left upon which to uphold the common law rule, except the statements of Coke and of Sheppard, that a sealed instrument cannot be delivered by the obligor to the obligee on condition, and the cases based thereon, and 'no reason and no policy justifies' the further adherence to the rule. The whole situation is amply cared for by the parol evidence rule, which applies as well to sealed as to unsealed instruments."

A. W. H. T.

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[8] 14 COLUMBIA LAW REVIEW 389.